

**IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**NO. 2019-CP-00940-COA**

**MARSHALL P. GRAVES**

**APPELLANT**

**v.**

**MARTIN HANKINS**

**APPELLEE**

DATE OF JUDGMENT:	05/07/2019
TRIAL JUDGE:	HON. ANTHONY ALAN MOZINGO
COURT FROM WHICH APPEALED:	LAMAR COUNTY CIRCUIT COURT
ATTORNEY FOR APPELLANT:	MARSHALL P. GRAVES (PRO SE)
ATTORNEY FOR APPELLEE:	JOSEPH PAUL PARKER
NATURE OF THE CASE:	CIVIL - TORTS - OTHER THAN PERSONAL INJURY AND PROPERTY DAMAGE
DISPOSITION:	AFFIRMED - 04/21/2020
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

**BEFORE J. WILSON, P.J., WESTBROOKS AND McDONALD, JJ.**

**J. WILSON, P.J., FOR THE COURT:**

¶1. Marshall Graves is a prisoner and habitual offender who is presently serving a life sentence for sexual battery and two concurrent fifteen-year sentences for fondling. Graves sued one of his former criminal defense attorneys for legal malpractice, but the circuit court dismissed the case with prejudice based on the statute of limitations. Graves then sued the Lamar County Circuit Clerk, Martin Hankins. Graves alleges that his malpractice lawsuit was dismissed because of Hankins's delay and negligence in filing and docketing the complaint. The circuit court ultimately dismissed Graves's complaint against Hankins with prejudice because it is barred by the Mississippi Tort Claims Act (MTCA), Miss. Code Ann.

§ 11-46-9(1)(a) & (m) (Rev. 2019). We affirm.

### **FACTS AND PROCEDURAL HISTORY**

¶2. Following a jury trial, Marshall Graves was convicted of sexual battery and two counts of fondling. The court sentenced Graves, as a habitual offender, to life imprisonment for sexual battery and concurrent fifteen-year terms for his fondling convictions. Graves's appointed appellate counsel filed a brief pursuant to *Lindsey v. State*, 939 So. 2d 743 (Miss. 2005), certifying that the record presented no arguable issues for appeal. Graves then filed a pro se brief asserting numerous errors. The Mississippi Supreme Court found that Graves's arguments were without merit and affirmed his convictions and sentences. *Graves v. State*, 216 So. 3d 1152 (Miss. 2016).

¶3. In June 2016, Graves filed a complaint against one of his trial attorneys, Robert Whitacre, alleging legal malpractice. The circuit court dismissed the complaint without prejudice for failure to obtain timely service of process. *See* M.R.C.P. 4(h). Graves filed a new complaint in June 2017. The circuit court subsequently dismissed that complaint based on the three-year statute of limitations. *See* Miss. Code Ann. § 15-1-49 (Rev. 2019). Graves argued that his complaint was timely filed under the prison mailbox rule, but the circuit court held that the prison mailbox rule did not apply. Graves filed a notice of appeal, but the Supreme Court dismissed the appeal because Graves failed to pay the appeal costs and filing fee. *Graves v. Whitacre*, No. 2019-TS-00635 (Miss. June 25, 2019) (panel order), *mot. for reh'g denied* (Miss. Aug. 7, 2019) (panel order), *successive mot. for reh'g denied* (Aug. 30, 2019) (single justice order).

¶4. On May 6, 2019, Graves filed a complaint against the Lamar County Circuit Clerk, Martin Hankins, alleging “legal malpractice” and “negligence.” Graves alleged that his second complaint against Whitacre was dismissed only because Hankins failed to stamp the complaint as “Filed” on June 12, 2017, when—according to Graves—it was received.<sup>1</sup> The complaint was stamped “Filed” on June 16, 2017.

¶5. The circuit court examined the complaint sua sponte, found that it was “frivolous,” and dismissed it with prejudice.<sup>2</sup> Within ten days, Graves then filed an “Objection” to the dismissal, which the circuit court treated as a motion for reconsideration. *See* M.R.C.P. 59 advisory committee notes. However, the circuit court denied Graves’s motion, holding that Hankins was immune from suit pursuant to the MTCA, Miss. Code Ann. § 11-46-9(1)(a) & (m). Graves appealed.

### ANALYSIS

¶6. We affirm. Pursuant to the MTCA, “[a] governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim . . . [a]rising out of a legislative or judicial action or inaction, or administrative action or inaction of a legislative or judicial nature[.]” *Id.* § 11-46-9(1)(a). Hankins’s alleged delay in filing Graves’s complaint against Whitacre was an “administrative action or inaction of a . . . judicial nature.” Therefore, sovereign immunity bars Graves’s claim against Hankins.

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<sup>1</sup> We have found nothing in the record to support Graves’s allegation that the circuit clerk actually received the complaint on June 12 rather than on June 16.

<sup>2</sup> Trial courts have the inherent power to dismiss a frivolous complaint sua sponte, even prior to service of process on the defendant. *Duncan v. Johnson*, 14 So. 3d 760, 762-63 (¶4) (Miss. Ct. App. 2009).

*See DeSoto County v. T.D.*, 160 So. 3d 1154, 1156-58 (¶¶8, 11-13) (Miss. 2015) (holding that a justice court clerk’s failure to cancel an arrest warrant was an administrative inaction of a judicial nature, and therefore sovereign immunity barred any claim based on the failure); *Collins v. Tallahatchie County*, 876 So. 2d 284, 288-89 (¶¶12-13) (Miss. 2004) (reaching the same conclusion as to a justice court clerk’s failure to transmit a signed warrant to the sheriff’s department); *Smith v. City of Saltillo*, 44 So. 3d 438, 441 (¶¶11-12) (Miss. Ct. App. 2010) (reaching the same conclusion as to a municipal court clerk’s failure to send an abstract to the Department of Public Safety).

¶7. Graves’s claim is also barred because he was an inmate at the time his claim arose.

The MTCA provides:

A governmental entity and its employees acting within the course and scope of their employment or duties shall not be liable for any claim . . . [o]f any claimant who at the time the claim arises is an inmate of any detention center, jail, workhouse, penal farm, penitentiary or other such institution . . . .

Miss. Code Ann. § 11-46-9(1)(m). Graves was an inmate at the South Mississippi Correctional Institution in Leakesville when his claim against Hankins arose. Therefore, Graves’s claim is also barred by the plain language of subsection 11-46-9(1)(m). *See Wallace v. Town of Raleigh*, 815 So. 2d 1203, 1207 (¶15) (Miss. 2002) (“[T]he . . . Legislature provided for an exemption from the government’s liability for claims made by inmates. Unlike other states with similar statutes, *no exceptions, restrictions or distinctions were made to allow an inmate to bring a claim against a governmental entity.*” (emphasis added)); *id.* at 1208 (¶17) (“The Legislature expressly stated the governmental entity would be immune from *all* liability from *any* claim of *any* claimant who was an inmate at the time

the claim arose.” (emphasis added)); *Bessent v. Clark*, 974 So. 2d 928, 933 (¶¶21-22) (Miss. Ct. App. 2007) (holding that inmate’s suit against the Secretary of State and other federal and state officials was barred by subsection 11-46-9(1)(m)).

### **CONCLUSION**

¶8. The circuit court correctly dismissed Graves’s complaint against Hankins because it is barred by sovereign immunity.

¶9. **AFFIRMED.**

**BARNES, C.J., CARLTON, P.J., GREENLEE, WESTBROOKS, TINDELL, McDONALD, LAWRENCE, McCARTY AND C. WILSON, JJ., CONCUR.**